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SUPREME COURT OF THE UNITED STATES.

Brief of Clarke for P. E.

October Term, 1899.

Term No. 199.

Filed Nov. 20, 1899.

THE WISCONSIN, MINNESOTA & PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

JACOB F. JACOBSON, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF OF PLAINTIFF IN ERROR.

ALBERT E. CLARKE,
Attorney for Plaintiff in Error.

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BRIEF OF PLAINTIFF IN ERROR.

Statement.

This proceeding was instituted by the defendant in error by a petition to the Railroad and Warehouse Commission of the State of Minnesota, praying that body to make an order, pursuant to a statute of that State, requiring the plaintiff
2 in error and the Willmar & Sioux Falls Railway Company to put in a connecting track or wye at Hanley Falls station, where their respective railroads intersect and cross.

Defendant in error is a citizen and resident of the village of Madison, a small station upon the Wisconsin, Minnesota & Pacific Railroad. This line of railroad extends from Watertown, South Dakota, to Morton, Minnesota, and thence, by a connection and traffic agreement with the Minneapolis & St. Louis Railroad, to Minneapolis. The connection and agreement are of such a character that the joint line constitutes practically one straight road from Watertown to Minneapolis, over which through trains are operated.

3 *Record, page 55, folio 94, also pages 57, 58, folio 99.*

It has joint tariffs and traffic contracts by which it makes through shipments from points on its own line to Sioux City,

Iowa, and Omaha, Nebraska, as well as to the various markets and business centers of adjoining States.

Record, pp. 57-58, folios 99 and 100; also page 60, folio 103.

The Willmar & Sioux Falls Railway extends from Sioux
4 Falls, South Dakota, to Willmar, Minnesota. At the last named station it connects with the St. Paul, Minneapolis & Manitoba Railway. The Willmar & Sioux Falls Company has no equipment, but the Great Northern Railway Company, as lessee of the St. Paul, Minneapolis & Manitoba Company, operates the road, accounting to the Willmar company for the net earnings of the line. By virtue of its traffic contracts and connections the Willmar & Sioux Falls Company has a direct line from Sioux Falls, South Dakota, to St. Paul and Minneapolis. It has direct connection with Sioux City, Iowa, as
5 well as with the principal markets of adjoining States.

Record, pages 58, 59, folios 100 to 103, inclusive.

The two railroad companies are competitors for all business originating west of Hanley Falls, destined to St. Paul, Minneapolis, Omaha and Sioux City markets.

Record, page 58, folio 101.

The tariff on stock shipments from Hanley Falls and points west and contiguous territory, to Omaha and Sioux City, is the same by the line of each company.

6 *Record, p. 55, folio 95; also p. 58, folio 100.*

The distance from Hanley Falls to Sioux City via the Willmar & Sioux Falls Railway and connections is 181 miles. By the Wisconsin, Minnesota & Pacific Railroad and its connections the distance is 380 miles.

Traffic originating on the railroad of the plaintiff in error west of Hanley Falls, destined to Omaha or Sioux City, could, if transferred at that point to the Willmar & Sioux Falls Company, be transported to destination by a shorter route than if carried wholly over the line of plaintiff in error. It could,
7 if thus transferred, be transported to destination in less time than by the longer line, provided such transfer be made in car loads without unloading from the cars in which the shipments are first made. No facilities have been provided by either of said railroad companies for the transfer or interchange of business at Hanley Falls, and there is no track connection between their respective railroads, but they have track connections and transfer facilities at Minneapolis.

Record, page 55, folio 97.

There is a larger supply of wood along the line of the
8 Great Northern system, of which the Willmar & Sioux Falls Railway forms a part, than upon the line of railway of the plaintiff in error. Citizens of towns west of Hanley Falls upon the line of railway of the plaintiff in error are purchasers and consumers of wood and posts, and a connection and transfer facilities at Hanley Falls would cheapen these commodities at such towns.

It is admitted by the defendant in error, who testified before the Commission that the connection and transfer facilities demanded will be useless unless a joint through rate
9 be made and a transfer without cost to the shipper be enforced.

Record, p. 45, folios 75, 76.

Chapter 91 of the General Laws of Minnesota for 1895 is as follows:

CHAPTER 91.

An act to amend chapter ten (10) of the General Laws of eighteen hundred and eighty-seven (1887), entitled an act to regulate common
10 carriers, and creating the Railroad and Warehouse Commission of the State of Minnesota and defining the duties of such commission in relation to common carriers.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. That section three (3) of chapter ten (10) of the General Laws of eighteen hundred and eighty-seven (1887) be amended so as to read as follows:

SEC. 3. (A) That all common carriers subject to the provisions of this act shall provide at all points of connection, crossing or intersection at grade, where it is practicable and necessary for the interests
11 of traffic, ample facilities by track connections for transferring any cars used in the regular business of their respective lines of road from their lines or tracks to those of any other common carrier whose lines or tracks may connect with, cross or intersect their own, and shall provide equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivery of passengers, property and cars to and from their several lines and those of other common carriers connecting therewith, and shall not discriminate in their rates or charges between such connecting lines or on freight coming over such lines; but this shall not
12 be construed as requiring any common carrier to furnish for another common carrier its tracks, equipment or terminal facilities without reasonable compensation; that each of said connecting lines shall pay its proportionate share for the building and maintenance of such tracks and switches as may be necessary to furnish the transfer facilities required by this act, and in case they cannot agree on the amount which each line shall pay, then said amount shall, upon application by either party, be determined and adjusted by the Railroad and Warehouse Commission, and either party shall have the right to appeal from the order of said commission fixing the amount so to be
13 paid, to the district court of the county where said transfer facilities are furnished, by serving a notice in writing on the adverse party within ten (10) days after the making and filing of such order by said commission, and upon the service of such notice there shall be pending in said district court a civil action for the adjustment and determination of the amount to be paid by each carrier for the expense

of the building and maintenance of said transfer facilities. Pleadings shall be made and filed in said action in conformity to those required by law and rules of practice in said court, and said cause shall be
14 tried in the manner provided for the trial of civil actions in the district courts of this State.

(B) All railway companies doing business in this State shall, upon the demand of any person or persons interested, or upon demand of the Railroad and Warehouse Commission, establish reasonable joint through rates for the transportation of freight between points on their respective lines within this State.

Carload lots shall be transferred without unloading from the cars in which such shipments were first made, unless such unloading into other cars shall be done without charge therefor to the shipper or
15 receiver of such carload lots, and such transfer shall be made without unreasonable delay, under such contract arrangements as such connecting companies may make, or under such rules as the Railroad and Warehouse Commission may prescribe, as hereafter provided in this act.

Less than carload lots shall be transferred into the connecting railway cars at cost, which shall be included in and made a part of the joint rates adopted by such railway companies, or established as provided by this act. When shipments of freight to be transported between different points within this State are required to be carried by
16 two (2) or more railway companies operating connecting lines, such railway companies shall transport the same at reasonable through rates, and shall at all times give the same facilities and accommodations to local or State traffic as they give to interstate traffic over their lines of road.

(C) In the event of that said railway companies fail to establish through joint rates, or fail to establish and charge reasonable rates for such through shipments, or fail to establish between themselves the rates and terms upon which cars of one company shall be transferred in such through shipments from the line of one company to the
17 other and returned, or fail to provide for the convenient and prompt transfer of such through freight from the cars of the receiving company to those of the connecting line, it shall be the duty of the Railroad and Warehouse Commission of this State, and said commission is hereby directed, upon the application of any person or persons interested, to establish reasonable joint rates for the shipment of freight and cars over any two or more connecting lines of railroad in this State, and to prescribe the reasonable rules under which any such cars so transferred shall be returned; and in establishing, changing or revising any such rates they shall take into consideration
18 the average of rates charged by said railway companies operating such connecting lines for joint interstate shipments for like distances.

The rates established by said comanission shall go into effect within ten (10) days after the same are promulgated by said commission, and from and after that time the schedule of rates so established shall be prima facie evidence in all courts of this State that such rates are reasonable through rates for the transportation of freight and cars upon the railroads for which such schedule shall have been fixed.

(D) Before the promulgation of such rates or rules, as above pro-
19 vided, the Railroad and Warehouse Commission shall notify the companies interested in the schedule of joint rates fixed by them, and they shall give said railroad companies a reasonable time thereafter to agree upon a division of charges provided for in such schedule; and in the event of the failure of the railway companies to agree upon such division and to notify the Board of such agreement, said commission shall, after a hearing of the companies interested, decide the same, taking into consideration the value of terminal facilities and all the circumstances of the haul, and the division so determined by
20 the commission shall, in all controversies or suits between the railroad companies interested, be prima facie evidence of the just and reasonable division of such charges.

(E) Every unjust and unreasonable charge for the transportation of freight and cars over two or more railroads in this State is hereby prohibited and declared to be unlawful, and every company or person violating the provisions of this section shall be subject to the penalties presribed in section twelve (12) of the original act to which this act is amendatory.

21 (F) Nothing herein contained shall be construed as requiring any railroad company to send its cars over the line of railroad of another company when its own line of railroad runs to and reaches the point of destination or the point of connection with another railroad on which such point of destination is located, or to use its track or terminal facilities at terminal points for the handling of cars or traffic of another or competing company; *provided*, that in no case shall the charges for transportation exceed the established through joint rates between any two points.

22 (G) Whenever any property is received by any common carrier subject to the provisions of this act to be transported from one place to another within this State, it shall be unlawful for such common carrier to limit in any way, except as stated in its classification schedule, hereinafter provided for, the common law liability with reference to such property, while in its custody as a common carrier; such liability must include the absolute responsibility of the common carrier for the acts of its agents in relation to such property.

SEC. 2. That subdivision "B" of section nine (9) of chapter ten (10)

23 of the General Laws of one thousand eight hundred and eighty-seven (1887), is hereby amended by striking out all after the word "office" in line twelve (12) of said subdivision "B," and substituting therefor the following, to-wit:

Said commissioners shall not, while holding office under this act, be interested in any stock or bonds of any common carrier or in any contract for construction, repair or maintenance of any railroad, or accept any retainer or employment from any common carrier under the jurisdiction of said commission.

24 No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission.

SEC. 3. That subdivision "D" of section fifteen (15) of chapter ten (10) of the General Laws of one thousand eight hundred and eighty-seven (1887), as amended by chapter one hundred and six (106) of the General Laws of one thousand eight hundred and ninety-one (1891), is hereby amended by inserting in line two (2) of said subdivision "D," after the word "commission," the words, "or any party to any proceeding before said commission and affected by its order."

25 SEC. 4. This act shall take effect and be in force from and after its passage.

Approved April 25th, 1895."

Upon a hearing had before the State Railroad and Warehouse Commission, an order was made requiring the interested companies to construct the connecting track. *Record, page 49.*

An appeal was duly taken from this order to the District Court of the State of Minnesota for Lac qui Parle County, which court ordered judgment in favor of the defendant in error and confirming the order of the commission. *Record, page 57.*

26 On August 21st, 1897, judgment was entered accordingly (*Record, pp. 62-63*), and an appeal therefrom was duly

taken to the State Supreme Court, which, on May 2d, 1898, affirmed the judgment of the District Court. *Record, page 71.*

A writ of error issued to said State Supreme Court,, and citation, was served January 4, 1899 (*Record, page 2*), and the return filed in this court January 30, 1899.

It was urged by the plaintiff in error upon the trial of said cause, both in the District and the Supreme Courts of the State of Minnesota, that the provisions of Chapter 91 of
27 the General Laws, 1895, amendatory of Chapter 10, General Laws, 1887, and all acts of the Legislature of the State of Minnesota which require the construction of connecting tracks and an interchange of business and traffic between intersecting railways, is in violation of the Fourteenth Amendment to the Constitution of the United States, in that the State of Minnesota, in, by and through the provisions of said Chapter 91 assumes to abridge the privileges and immunities of this plaintiff in error as a citizen and denies to it the equal protection of the laws, and deprives it of its property and the use thereof without due compensation or due
28 process of law, as well as the right and liberty of contracting with reference to its business.

It was also urged by the plaintiff in error upon the trial of said cause, both in the District and Supreme Courts of the State of Minnesota, that the provisions of said Chapter 91, General Laws of 1895, was violative of the Fourteenth Amendment to the Constitution of the United States, in that by the provisions of said chapter the State of Minnesota denies to the plaintiff in error the right to contract in reference to its own business, and thus takes its property without its consent and compels it to enter into involuntary, unreasonable
29 and unprofitable contracts with another railroad at the instance of third parties, resulting in a loss of business and revenue on the part of the plaintiff in error.

It was also urged by the plaintiff in error upon the trial of said case, both in the District and Supreme Courts of the State of Minnesota, that the provisions of said Chapter 91, General Laws of 1895, are in violation of Section 10, Article I, of the Constitution of the United States, in that the provisions of said chapter impair the obligation of the charter contract between said State of Minnesota and the plaintiff in error.

30 It was also urged by the plaintiff in error upon the trial of said case, both in the District and Supreme Courts of the State of Minnesota, that the provisions of said Chapter 91, of General Laws of 1895, are violative of Section 8, Article I, of the Constitution of the United States, which confers upon Congress the exclusive power to regulate commerce among the several States.

The Supreme Court of the State of Minnesota, by its final judgment in this action, rendered on the 2d day of May, 1898, adjudged and determined that the provisions of said Chapter
91, General Laws of 1895, amendatory of Chapter 10, Gen-
31 eral Laws 1887, of the acts of the Legislature of the State of Minnesota, are not in violation of the Fourteenth Amendment to the Constitution of the United States, nor in violation of Section 10, Article 1, nor Section 8, Article 1, of the said Federal Constitution.

Record, pp. 67, 68, folio 118.

Assignment of Errors.

The plaintiff in error respectfully submits that the Supreme Court of the State of Minnesota erred in this:

I. The Court erred in holding that the provisions of Chapter 91 of the General Laws of the State of Minnesota for
1895, amendatory of Chapter 10 of the General Laws of
32 1887, of the acts of the Legislature of the State of Minnesota, which require the construction of connecting tracks in the interchange of business and traffic between intersecting railways, is not in violation of the Fourteenth Amendment to the Constitution of the United States, in that the State of Minnesota, by and through the provisions of said Chapter 91, assumes to abridge the privileges and immunities of the plaintiff in error as a citizen, denies to it the equal protection of the laws, and deprives it of its property and the use thereof without due compensation or due process of law, and
denies to it the right of contracting with reference to its
33 own business.

II. The Court erred in holding that the provisions of said Chapter 91, General Laws 1895, are not in violation of the Fourteenth Amendment to the Constitution of the United States, in that by the provisions of said chapter the State of Minnesota denies to the plaintiff in error the right to contract with reference to its business, and thus takes its property without its consent and compels it to enter into involuntary, unreasonable and unprofitable contracts with another railroad company at the instance of third parties, resulting in a loss of
business and revenue on the part of the plaintiff in error.

34 III. The Court erred in holding that the provisions of said Chapter 91, General Laws 1895, are not in violation of Section 10, Article 1, of the Constitution of the United States, in that the provisions of said chapter impair the obligation of the charter contract between said State of Minnesota and the plaintiff in error.

IV. The Court erred in holding that the provisions of said Chapter 91, General Laws 1895, are not in violation of

Section 8, Article 1, of the Constitution of the United States, which confers upon Congress the exclusive power to regulate commerce among the several States.

Argument.

I.

The plaintiff in error is a railroad corporation created by special act of the Legislature of the Territory of Minnesota, approved May 23d, 1857, the act being Chapter 2 of the Special Laws, extra session, of 1857. This act, with its amendments, constitutes the charter of the company, and is the contract which fixes and measures the mutual and several obligations and duties of the railroad company and the State.

A railroad company is guaranteed by its charter the right to build a railroad and having built it the right to operate it. The purpose of the construction of a railroad is to earn money. Its methods of earning money are limited to the carriage of passengers and freight. The value of the property and the value of the franchise is dependent upon the earning capacity. By the acceptance of the charter and the construction of the railroad thereby authorized, a railroad company becomes invested with the right to transport over its road all freight and passenger traffic which it can secure by legitimate methods. As the value of the property, its solvency and its existence are dependent upon its ability to secure traffic, and as its entire property is acquired, constructed and maintained for the sole purpose of such transportation, it logically and necessarily follows that the right or franchise to construct and operate a railroad includes the right to secure and retain business.

The franchises of a railroad company are limited to its own line. They do not extend to, nor can they be exercised upon the lines of other railroads. It has the right to preserve, protect and foster its own business and interests. The charter includes a contract that the State will not destroy the value of the property it has induced the corporation to construct, nor will it compel the corporation to exercise its corporate powers for the destruction of its own business.

The State of Minnesota, by the act of its Legislature, asserts the right

1. To compel two railroad companies, competing for a certain class of traffic from a certain territory to a common market, to join in the cost of construction of a track to be used for the purpose of depriving one company of its traffic and transferring it to the other. *Sec. 3 (1), Act of 1895.*

39 2. To compel a railroad company, upon the line of which traffic originates and over which it can be transported to destination, to surrender its business to its competitors at any point of intersection which is nearer the common market by the competing line, than by that of the initial carrier, notwithstanding that such initial carrier will carry it at the same rate over its own line. *Sec. 3 (A), Act of 1895.*

3. To compel two railroad companies to make a joint rate for the transportation of such traffic. *Sec. 3 (B), Act of 1895.*

4. To compel the initial carrier to deliver its cars to the
40 competing line, or, as an alternative, to transfer car loads of freight into the cars of the other company without charge. *Sec. 3 (B), Act of 1895.*

5. To compel the initial carrier to transfer less than car load lots at cost. *Sec. 3 (B), Act of 1895.*

6. To compel the connecting carrier to hire the cars of the competing initial carrier for the continued transporcation of the goods.

7. To compel a railroad company to acquire land by purchase or condemnation for the construction of a track to be used to divert its business to the line of its competitor.

41 Subdivision "F" of Section 3 of the act provides as follows:

"(F) Nothing herein contained shall be construed as requiring any railroad company to send its cars over the line of railroad of another company when its own line of railroad runs to and reaches the point of destination or the point of connection with another railroad on which such point of destination is located, or to use its track or terminal facilities at terminal points for the handling of cars or traffic of another or competing company; *provided*, that in no case shall the charges for transportation exceed the established through joint rates between any two points."

42 Under the provisions of this section the plaintiff in error is relieved from delivering its cars to its competitor, but is subject to the burden of unloading the contents into the cars of the other company without charge, the tariff being carefully limited, by the proviso, to the "through joint rates."

The plaintiff in error submits the following propositions of law:

(a) The act of the State Legislature requiring the plaintiff in error to surrender the traffic which it has secured for transporation over its own line, to a destination to which it has constructed and acquired railroad facilities, from which transportation it derives its revenue, is a violation of the
43 charter contract.

(b) The provision of the act by which two railroad corporations are compelled to make a joint rate for the transportation of freight between points on their respective lines, denies to such corporations the equal protection of the laws, in that it denies the right to contract in reference to their own business; it assumes to compel them to enter into contract relations against their will; it compels them to exercise their franchises to the destruction of their business; it compels them to surrender the right to use their property for the purpose for which it was acquired; it compels them to ren-
44 der service without compensation, and thus imposes upon them burdens and restrictions from which other citizens of the State are exempted.

(c) Enforcement of the act will deprive the plaintiff in error of its property without due process of law, in this:

It deprives it of the right to contract in reference to its own business, which is both a personal and a property right.

It deprives it of the right to transport the traffic it has secured to the place of destination over its own line of railroad, which railroad was constructed at great cost for the sole purpose of such transportation, thereby depriving it of
45 its revenue, depleting its income, reducing the value of its property and preventing the enjoyment of the franchise granted by the State.

It compels plaintiff in error to expend its money and the time and labor of its employes in unloading its cars at Hanley Falls and loading the cars of its competitor, without any compensation whatever.

In case traffic is destined to a point not reached by the line of the plaintiff in error, or by its connections, it is required by the act to deliver its cars to the connecting carrier, without security for their return, without provision for
46 compensation for use, and without regard for the necessity for their use upon its own line of railroad.

It is required to receive the cars of the connecting carrier and use them in the continued transportation of traffic, although it may have cars of its own which are idle, and with which such traffic could be transported.

(d) The act of the State Legislature violates Section 8, Article I, of the Federal Constitution, as it assumes to regulate interstate commerce.

The act of the State Legislature must be construed as an entirety, and it is plain that its enforcement is a violation of the contract embodied in the charter of the plaintiff in
47 error. Mr. Black, in his work on constitutional prohibitions (Sec. 14), says:

Black

"The doctrine, as now settled and universally accepted, may be stated as follows: The charter of a private corporation is a contract, within the meaning of the Constitution of the United States, between the State granting the charter and the corporation created by it, and any constitutional provision or act of the Legislature that impairs it, whether by enlarging the power of the State over the body corporate, or by abridging its franchises, or otherwise altering it in a material point, is repugnant to the Constitution and void."

48 In *Planters Bank vs. Sharp, 6 Howard, 327,* this court says:

"One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not, by the constitution, to be impaired at all. This is not a question of degree, or manner or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force."

Section 3 of Chapter 2, Special Laws of Minnesota, passed at the extra session of 1857, which is the act by which plaintiff in error was incorporated, reads as follows:

49 "SEC. 3. The said corporation is hereby authorized and empowered, and *it is hereby declared that the object and purposes thereof, are to survey, locate, construct, complete, maintain, use and operate;* at their pleasure to alter the line thereof, without changing the termini on the Mississippi River, a railroad with one or more tracks, or lines of rails, from the village of Red Wing, in the county of Goodhue and Territory of Minnesota, by a most feasible and practicable route, to the line of said Territory in the direction of the great bend of the Missouri River, together with all proper stations, depots, turnouts,
50 engines, cars and other appurtenances and furniture of a railroad, and to form such junctions and make such other arrangements as may be agreed upon, not inconsistent with the charters of any other railroad company in said Territory, or connecting with said Territory."

The railroad has been located and constructed under this legislative authority, and has since its construction been maintained and operated. By this grant the legislature contracted that the plaintiff in error should have the right to
51 become a competitor for the business of the public with no restrictions upon its right to secure and retain such business other than those reasonable uniform regulations and restrictions, applicable alike to all carriers and resulting from usual business conditions. The record (p. 58, folio 101) shows affirmatively that the plaintiff in error and its co-defendant in the State Court are competitors for business west of the point of intersection at Hanley Falls. The State of Minnesota, the common source of corporate existence and privilege, by the provisions of this law enters the field of competition and by virtue of its paramount authority, assumes to divert the business of the plaintiff in error to the line of its com-
52 petitor. The State assumes to favor one citizen at the expense of another. The State assumes to distribute and apportion the business of a certain territory between carriers. The State assumes the right to compel a carrier to join in the construction and creation of a competitive line having such an advantage in mileage that it necessarily destroys its exist-

ing business. The plaintiff in error is denied the right to retain its business but is commanded to surrender it.

Every railroad company seeks to secure the longest possible haul over its own rails. The longer the continuous haul, the less the cost of transportation to the carrier. Traffic
53 agreements between carriers are always conditioned to secure the longest possible haul to the initial carrier, which has secured the business. The right to make such contracts in its own interest and for its own advantage is one of the valuable rights conferred by the charter contract. It is a right guaranteed by the constitution. It is a personal right as well as a property right. Enforcement of the State statute deprives the carrier of the right to make contracts for carriage beyond its own line, by which it can secure rates and divisions of earnings most favorable to itself and secure the longest possible haul over its own rails. Division of joint earn-
54 ings is an important factor in railroad management and earnings. Competition between connecting carriers is an important element in fixing the earnings of an initial carrier. Such competition enables the initial carrier to contract to its own advantage without increasing the cost of transportation to the shipper or consignee. Division of joint earnings is purely and properly a matter of contract. The right to make such contracts must be admitted, not being contrary to common law, statute law or public policy. Enforcement of the State statute destroys that right. By compelling the carrier to surrender its traffic to the carrier operating any
55 intersecting line, which furnishing a shorter route to destination, the initial carrier is deprived of the right to select and contract with its connecting carriers and so its charter contract is violated; it is denied the equal protection of the laws which protect individual contracts and its property is taken without due process of law.

The Fourteenth Amendment to the Federal Constitution secures, not only the right of the citizen to be free from mere physical restraint of his person, but to be free in the employment of all his faculties; to use them in all lawful ways; to live and work where he will, and earn his livelihood in
56 any lawful manner; to pursue any livelihood or avocation, and for that purpose to enter into all contracts that may be proper, necessary and essential to his carrying out the purposes above mentioned. These rights are inalienable.

United States vs. Sweener, 95 Fed. Rep. 450.
Allgeyer vs. Louisiana, 165 U. S. 589.

Corporate rights and individual rights stand upon the same level platform of equality and personal liberty. The corporation and the individual are alike citizens of state and nation and are alike entitled to the equal protection of the laws which are framed to effectuate the principles declared as the basis
57 of our right to self-government and independence. The

declared purpose of the State is to deprive the plaintiff in error of the right to make its own contracts, select its own connecting carriers, agree upon the division of joint earnings, and carry freight upon its own railroad. It proposes to create traffic contracts by which the plaintiff in error can be compelled to divide its earnings and its business with its competitor; to compel it to enter into a joint tariff with such competitor; to compel it to deliver its cars to such competitor; to surrender its business, relinquish the long haul over its own line, render service without compensation in transferring the contents of cars, and expend its money in constructing fa-
58 cilities for the destruction of its own business.

The State Supreme Court has construed the statute as one designed to compel a mechanical connection of the railroads, an interchange of traffic and the establishment of a joint tariff. It clearly goes to the extent of establishing contract relations under compulsion. It is conceded that the mechanical connection is useless in the absence of a joint tariff and a transfer without cost to the shipper.

Record, p. 45, folios 75, 76.

The judgment of the State court must be treated as a
59 step toward enforcement of the act in all its parts; not as an enforcement of a mere mechanical connection between the railroads. It asserts the power of the State to compel a railroad company whose road was built under a charter older than the Act, to enter into involuntary and unprofitable traffic agreements by which it will be deprived of the use of its property for the purpose for which it was constructed, and its income and earnings diminished by an enforced relinquishment of its business.

The power to regulate commerce does not include the power to interfere with private contracts.

60 *Railroad Co. vs. Richmond, 19 Wallace, 589, 590.*

By the terms of this Act the State is given control of the business of a carrier in detail. Under its provisions a railroad company may be required:

To enter into involuntary contract relations with every carrier whose line now or hereafter intersects its own.

To deliver to the carrier operating any intersecting road the property entrusted to its care, and for which it is responsible, without regard to the solvency or insolvency of such carrier.

61 To deliver its rolling stock to such carrier, regardless of its own needs, and without security for its return or preservation.

To make joint tariffs for the transportation of traffic.

To adjust its time cards to those of the intersecting line; otherwise the transfer would be without advantage.

To furnish and maintain at every railroad crossing, the buildings, switch engines and employes required to make the transfers. If the initial carrier declines to deliver its own cars to the company operating the intersecting line, their contents must be transferred without compensation, and thus the
62 time and services of its employes are to be confiscated for the benefit of the individual shipper.

If the intersecting carrier fails to furnish the necessary cars to receive the transferred shipment, the law becomes inoperative; yet they can only be supplied by the maintenance at each crossing of storage tracks and a constant supply of cars. In case of transfers of live stock, delay at remote crossings necessitates the erection of yards, a water and food supply, and men to care for the stock.

To make time cards affording close connections at every crossing is an impossibility. To delay trains for the transfer of traffic at every crossing would be destructive of the
63 business of the carrier. Passing tracks, freight houses, switchmen, stock yards and storage tracks must, under this law, be provided at every point of intersection. Railroad companies provide these facilities at their regular stations. Are they also required to furnish them at every crossing? If so, who is to furnish them? Can two railroad companies be compelled to enter into a co-partnership of labor and division of expenses at every railroad crossing, make joint rates, joint time cards, and render service gratuitously, or at cost?

64 II.

Mr. Justice Field held, in *Oregon Short Line, etc., Co. vs. Northern Pacific R. R. Co., 51 Fed. Rep., 470*, that neither at common law nor under the Interstate Commerce Act can a railroad company be compelled to haul the cars of another company over its line where it has cars of its own which it desires to use for the transportation of traffic; nor can one carrier be required to advance or assume payment of the freight charges due a preceding carrier. Such matters are regulated by contract.

65 It is held in *Railway Co. vs. Railway Co., 41 Federal Reporter, 562*, that a court cannot require a railroad company to contract with another carrier, engaged in like traffic, for a joint through routing and joint through rate, nor can the court make such a contract for the parties.

And see:

Railway Co. vs. Osborn, 52 Fed. Rep., 914.
Railway Co. vs. Ry. Co., 59 Fed. Rep., 400.
Kentucky & I. Bridge Co., 37 Fed. Rep., 625.

66 I have been unable to find that any court of last resort has heretofore committed itself to the proposition that a

The ruling of the Supreme Court of Iowa in the case of *Railway* vs. *Dey*, herein referred to, upon the second hearing, will be found in *56 Northwestern Reporter, page 271.*

State is invested with a power so arbitrary. It is true that the Supreme Court of Iowa, in the case of *Railway Co. vs. Dey et al., Railroad Commissioners, 48 N. W. Rep., 98*, held in favor of the validity of a similar act (which did not, however, provide for a compulsory mechanical connection of intersecting roads), but the same court, in the same case, upon a second appeal, disapproved that holding. While it was held that,
upon the second appeal, the ruling first made must stand
67 as the law of that case, the court said:

"In thus disposing of this case we are not to be understood as approving of the correctness of the former holding. Some of us are content with the result reached in the former opinion; others, the writer included, do not approve of some of the reasons and conclusions found in the opinion rendered by a majority of the Court as then constituted, and do not wish to be considered as bound by it in any other case."

A statute like this was held by the Supreme Court of Nebraska to be violative of the Federal Constitution.

State ex rel. Board of Transportation vs. Railroad
68 *Co., 65 Northwestern Reporter, 766.*

The case was carefully considered. The opinion contains a review of the decisions of this court upon the question of State control of railroads. The conclusion reached was, that the act must be construed as an entirety; that the question of power to enforce a mere mechanical connection was but an incident to the main question, which involves the power of the courts to make contracts between individuals; a power held not to exist. This is the true point involved. As already shown, a mechanical connection of two railroads is
69 of no benefit to the shipper unless the State can compel the carriers to enter into contract relations, make joint rates, arrange for divisions of earnings, exchange or hire of cars, payment of, or credit for advance charges, etc. Applied to this case, the power includes the right to oblige the plaintiff in error to expend its money in the construction of a track designed for the destruction of its business and the consequent diminution of the earning capacity and value of its entire property. The purpose for which the track is to be built is the
70 important feature which controls the question of power to compel its construction.

Mr. Justice Field, in *County of Santa Clara vs. Southern Pacific R. R. Co., 18 Fed. Rep., 406*, said:

"The doctrine of unlimited power of the State over corporations, their franchises and property, simply because they are created by the State, so frequently and positively affirmed by counsel, has no foundation, whatever, in the law of the country. By the decision of the Supreme Court of the United States in the Dartmouth College Case, it was settled, after great consideration, that the charter of a corpora-
71 tion, under which its franchises its capacity to do business and hold property is conferred, is a contract between the corporators and the State, and therefore within the protection of the federal constitution prohibiting legislation impairing the obligation of contracts. So far

from the State having unlimited control over the franchises and property of corporations, because of its paternity to them, it has under that decision *only such as it possesses over the contracts and property of individuals.*"

The State statute can only be effective by interference with the right of private contract. When two railroad companies have voluntarily connected their lines of railroad
72 and entered into an arrangement for the transfer and continued transportation of traffic, the independent line thus voluntarily created is subject to the same degree and character of State regulation as other lines. The question of *regulation* of a joint line voluntarily created, and the compulsory *creation* of such line, are distinct. If two individuals enter into a co-partnership, such co-partnership is subject to all laws regulating co-partnerships. It does not follow that the individuals can be compelled to form the co-partnership.

73 III.

It appears affirmatively by the petition, as well as by the separate answers of the interested railroad companies, that both railroads are interstate roads, and the business which the State assumes to control and regulate is interstate business. The evidence shows that the traffic to be affected by the proposed connection is interstate traffic, viz: the transportation of cattle from points on the line of the plaintiff in error (which extends westward to Watertown, South Dakota) to Omaha, Nebraska, and Sioux City, Iowa, and the transportation of wood and posts between the same points on the
74 line of the plaintiff in error and points on the line of the Great Northern Railway Company. The lines of the last named company are interstate, connecting with the Willmar & Sioux Falls Railway at Willmar, Minnesota.

The State law is clearly violative of Section 8, Article 1, of the Federal Constitution, which confers upon Congress exclusive power to regulate commerce among the several States.

As applied to the case at bar, the Act of the State Legislature is applicable to business which is shown by the record to be wholly interstate. The State assumes to compel two interstate carriers to route business over a certain joint line
75 to be created under compulsion, to the exclusion of the lines already created by voluntary contract. Is not assertion of this power assertion of the power to "regulate?" Commerce is traffic. It is intercourse between States for purposes of trade. It includes the products of the several States. It extends to the persons who conduct the traffic and the instruments used. Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between States has commenced. When a State assumes to fix the route by which such traffic must be conducted—assumes to compel carriers to furnish cars

76 and transfer facilities for such traffic commands carriers to render gratuitous service to effectuate transportation to certain markets—requires the creation of new lines reaching certain points of destination beyond the borders of the State demands the establishment of joint tariffs over the line thus created, it assumes to "regulate" commerce between States. The very purpose of this proceeding is to regulate charges for tranportation of interstate business, and arbitrarily designate the route over which it shall be carried.

In the case of *Wabash, &c., Railway Co. vs. Illinois, 118 U. S., pp. 571-573*, Mr. Justice Miller, in delivering the opinion of the Court, quoted with approval from *Hall vs. De*
77 *Cuir, 95 U. S., 485*, as follows:

"The line which separates the powers of the States from this exclusive power of Congress is not always distinctly marked, and oftentimes it is not easy to determine on which side a particular case belongs. Judges not unfrequently differ in their reasons for a decision in which they concur. Under such circumstances it would be a useless task to undertake to fix an arbitrary rule by which the line must, in all cases, be located. It is far better to leave a matter of such delicacy to be settled in each case upon a view of the particular rights involved. But we think it may safely be said that State legislation which seeks to
78 impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the State, but directly upon the business as it comes into the State from without, or goes out from within. While it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. * * * It was to meet just such a case that the com-
79 mercial clause in the Constitution was adopted. The river Mississippi passes through or along the borders of ten different States, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each State could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay, more, it could prescribe rules by which the carrier must be gov-
80 erned within the State in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other, another. Commerce cannot flourish in the midst of such embarrassments."

The opinion in the case cited proceeds as follows: (p. 572-573).

"The applicability of this language to the case now under consideration, of a continuous transportation of goods from New York to Central Illinois, or from the latter to New York, is obvious, and it is not easy to see how any distinction can be made. Whatever may be the instrumentalities by which this transportation from the one point to
81 the other is affected, it is but one voyage, as much so as that of the steamboat on the Mississippi River. It is not the railroads themselves that are regulated by this act of the Illinois Legislature so much as the charge for transportation, and, in language just cited, if each one of the States through whose territory these goods are transported

can fix its own rules for prices, for modes of transit, for times and modes of delivery, and all the other incidents of transportation to which the word 'regulation' can be applied, it is readily seen that the embarrassments upon interstate transportation, as an element of
82 interstate commerce, might be too oppressive to be submitted to. 'It was,' in the language of the court cited above, 'to meet just such case that the commerce clause of the Constitution was adopted.'

It cannot be too strongly insisted upon that the right of continuous transportation from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the State might choose to impose upon it, that the commerce clause was intended to secure. This clause giving to Congress the power to regulate commerce among the States and with foreign nations, as this Court has said before, was among the most important of the subjects which prompted the formation of the Constitution. *Cook v. Pennsylvania, 97 U. S. 566, 574; Brown v. Maryland, 12 Wheat. 419,*
83 *446;* and it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the States which was deemed essential to a more perfect union by the framers of the Constitution, if, at every stage of the transportation of goods and chattels through the country, the State within whose limits a part of this transportation must be done could impose regulations concerning the price, compensation, or taxation, or any other restrictive regulation interfering with and seriously embarrassing this commerce."

84 The reservation to Congress of the right to regulate commerce between the States is one of the most important reserved powers, and at the same time one most liable to encroachment. The opportunity for plausible argument as to what constitutes "regulation" affords encouragement to the enactment of laws which, by their terms, appear limited to legitimate purposes, but by application and construction infringe upon the prerogatives of the general government. The application of the Act under consideration is, in this case, to interstate commerce solely, and the question is here presented whether the requirement of compulsory connection be-
85 tween competing carriers, and the establishment of involuntary contract relations affecting the route, the earnings and the tariff of each, is or is not "regulation of commerce" between States. The ingenuity of legislators is taxed to frame laws which assume to confer upon State governments the absolute control of corporate property, and yet escape technical conflict with the language of the Federal constitution. Seventy-five years ago Mr. Chief Justice Marshall said in *Gibbons vs. Ogden, 9 Wallace, 222 (6 Curtis, 23):*

"Powerful and ingenious minds, taking as postulates that the
86 powers expressly granted to the government of the Union, are to be contracted by construction into the narrowest possible compass, and that the original powers of the States are retained, if any possible construction will retain them, may, by a course of well-digested but refined and metaphysical reasoning founded on these premises, explain away the Constitution of our country, and leave it a magnificent structure indeed, to look at, but totally unfit for use. They may so entangle and perplex the understanding as to obscure principles which were before thought quite plain, and induce doubts where, if the mind
87 were to pursue its own course, none would be perceived. In such a case it is peculiarly necessary to recur to safe and fundamental

principles to sustain those principles, and, when sustained, to make them the tests of the arguments to be examined."

The act of the State Legislature is clearly an ill-disguised attempt to control and regulate interstate traffic. In truth, it assumes an authority in which little can be found wanting to constitute complete and detailed regulation. The State assumes to select and control the routes, the agencies, the vehicles, the points of transfer, the transfer of merchandise
88 and the rates. Like laws in adjoining States would leave but little for Congress to regulate.

Respectfully submitted,

ALBERT E. CLARKE,
Attorney for Plaintiff in Error.